

Appeal from a decision of the Alaska State Office, Bureau of Land Management, declaring unpatented mining claims abandoned and void. F-65265 and F-65530.

Affirmed.

1. Federal Land Policy and Management Act of 1976: Recordation of Mining Claims and Abandonment -- Mining Claims: Abandonment

The failure to file the instruments required by sec. 314 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1744 (1976), and 43 CFR 3833.1 and 3833.2 in the proper Bureau of Land Management office within the time periods prescribed therein conclusively constitutes abandonment of the mining claim by the owner.

2. Administrative Authority: Generally -- Federal Land Policy and Management Act of 1976: Rules and Regulations -- Mining Claims: Abandonment -- Regulations: Generally -- Secretary of the Interior

The Secretary of the Interior has been authorized by the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1740 (1976), to "promulgate rules and regulations to carry out" its purposes. The regulations providing for the conclusive presumption of mining claim abandonment and voidance are directly authorized by correlative language in sec. 314 of FLPMA, 43 U.S.C. § 1744 (1976). The statutory presumption of abandonment operates as a matter of law, and no administrative

involvement, including issuance of regulations, would be necessary to its operation.

3. Administrative Authority: Generally -- Constitutional Law: Generally -- Statutes

The Department of the Interior, as an agency of the executive branch of the Government, is not the proper forum to decide whether or not a statute enacted by Congress is constitutional.

4. Administrative Procedure: Burden of Proof -- Evidence: Burden of Proof -- Evidence: Presumptions -- Evidence: Sufficiency -- Mining Claims: Abandonment

A presumption of regularity supports the official acts of public officers and, absent clear evidence to the contrary, it will be presumed that they have properly discharged their official duties. Therefore, appellant's bare assertion that her proof of labor was timely filed is insufficient to rebut the presumption.

APPEARANCES: R. Eldridge Hicks, Esq., Anchorage, Alaska, for appellant.

OPINION BY ADMINISTRATIVE JUDGE HENRIQUES

By decision of September 1, 1981, the Alaska State Office of the Bureau of Land Management (BLM) declared the unpatented HUB and Calkins-White placer mining claims 1/ abandoned and void for failure to file timely with BLM in 1979 either an affidavit of assessment work performed or a notice of intention to hold the claims. The owner of the claims, Virginia White, appeals.

[1] Both section 314(a) of the Federal Land Policy and Management Act of 1976 (FLPMA), 43 U.S.C. § 1744(a) (1976), and 43 CFR 3833.2-1(a) require recording with BLM on or before October 22, 1979, and on or before December 30 of each calendar year thereafter, either a notice of intention to hold the mining claim or evidence of annual assessment work performed

1/ The HUB, F-65265, is situated in unsurveyed sec. 15, T. 12 S., R. 32 W., Kateel River meridian. It was located on Sept. 22, 1954. The Calkins-White, F-65530, is situated in secs. 33 and 34, T. 10 S., R. 33 W. It was located on July 20, 1971. The proper BLM office for the recordation of these claims situated on the Nome Peninsula is the Fairbanks District Office. 43 CFR 1821.2-1.

Both claims were under application for mineral survey for the purpose of proceeding to patent: M.S. 2297 (for the HUB) and M.S. 2380 (for the Calkins-White). These files were identified by the respective serial numbers F-23118 and F-48868.

thereon. Harvey A. Clifton, 60 IBLA 29 (1981). 43 CFR 3833.4(a) states that a claim for which these necessary filings are not timely made "shall be void," in accordance with section 314(c) of FLPMA, under which it is conclusively deemed abandoned.

The record contains no evidence that proof of labor for the Calkins-White claim was ever filed with BLM. Proof of labor on the HUB claim was filed with BLM on December 29, 1978, but no evidence of assessment work was filed during calendar year 1979. Proof of labor for the 1979 assessment year was filed with BLM, but, unfortunately, not until January 24, 1980, roughly 3 weeks late. Appellant advances several responses to the alleged failure to timely file:

1. December 30, 1979, was a Sunday. The evidence of annual assessment was filed of record on December 31, 1979.
2. The 1979 evidence of annual assessment work was apparently misfiled at the BLM office first in [file No.] F-23118, then in F-48868, before it finally reached the correct file, F-65265, on or about January 24, 1980.
3. No person was available at "the proper BLM office" at Nome, Alaska, to receive a filing of evidence of annual assessment work on or before December 30, 1979.
4. The appellant has been denied due process to the extent that the regulations failed to set forth with adequate detail "the proper BLM office" for the filing of evidence of annual assessment work in the Cape Nome Recording District.
5. The evidence of annual assessment work was sufficiently "filed" at the time of recordation at the office of the District Recorder, Cape Nome Recording District.
6. Appellant is entitled to an equitable adjudication * * * [concerning] the date of actual receipt of the evidence of annual assessment work at Fairbanks * * * because that same document was inadvertently misdirected to the wrong files.
7. There has been no substantial default in the performance of annual assessment work.
8. The U.S. Constitution * * * precludes the Department of the Interior from issuing regulations conclusively extinguishing the appellant's unpatented mining claims.

[2, 3] The Secretary of the Interior has been authorized by an act of Congress to "promulgate rules and regulations to carry out the purposes of" FLPMA. See 43 U.S.C. § 1740 (1976). The regulations providing for the conclusive presumption of mining claim abandonment and voidance are directly authorized by correlative language in section 314 of FLPMA, 43 U.S.C. § 1744 (1976). The statutory presumption of abandonment operates as a matter of law, and no administrative involvement, including the issuance of regulations, would be necessary to its operation. Lynn Keith, 53 IBLA 192, 88 I.D. 369

(1981). Appellant has brought her complaint concerning the constitutionality of the statutory provision before the wrong forum, for the Department of the Interior is part of the executive branch of the Federal Government and is without authority to judge the constitutionality of a product of the legislative branch. That responsibility and power falls to the courts. James G. Robinson, 60 IBLA 134 (1981).

[4] The record indicates that the proof of labor filed January 24, 1980, was marked with the file number of the mineral survey files, F-23118 and F-48868 (see n.1, supra) as well as the recordation file (F-65265), as the three file numbers were each written at the top of the proof of labor in question, with the first two file numbers scratched out. Nevertheless, as a matter of practice, BLM date stamps documents upon receipt, before they are placed in files. Since the proof of labor for 1979 bears only one date stamp ("January 24, 1980") by the Fairbanks District Office, the proper BLM recordation office in this case, we must presume that to be the date of filing. 2/ It is therefore irrelevant that the document was then placed in an incorrect file. No evidence beyond appellant's bare assertion suggests that the document was filed on December 31, 1979, and that assertion is insufficient to rebut the established legal presumption of the regularity of official acts of public officers discharging their official duties. Jayne A. McHargue, 61 IBLA 163, 165 (1982).

Contrary to appellant's urgings, the statutory and regulatory scheme for recording mining claim documents makes no allowance for mere "substantial compliance." Strict compliance is necessary, and the Interior Department has no discretionary authority to excuse noncompliance or to afford claimants any relief from the statutory consequences. Lynn Keith, supra at 196, 88 I.D. at 372. We need not address appellant's remaining contentions, because there is no supporting evidence that proof of labor for either claim was filed with the proper BLM office, 3/ or any BLM office, on or before December 31, 1979, that year's last allowable filing day under 43 CFR 3833 and 1821.2-2(e). 4/ BLM properly declared these mining claims abandoned and void.

2/ For purposes of recordation of mining claim documents with BLM, "file" means "being received and date stamped by the proper BLM Office." 43 CFR 3833.1-2(a); see 43 CFR 1821.2-2(f).

3/ In Alaska, occasionally it is not clear which is the "proper BLM office." Depending on where a claim is situated, documents will be filed either with BLM's office in Anchorage or Fairbanks. Where resort to the map at 43 CFR 1821.2-1 does not allow one to "determine with substantial accuracy" which of the offices is "proper," a good faith mining claimant may file in either location. Inspiration Development Co., 54 IBLA 390, 396 (1981). But the filing must in any case be timely. Appellant's was not timely. Moreover, her claims were clearly within the Fairbanks district; and appellant has not seriously contended to the contrary.

4/ 43 CFR 1821.2-2(e):

"Any document required by law, regulation, or decision to be filed within a stated period, the last day of which falls on a day the office is officially closed, shall be deemed to be timely filed if it is received in the proper office on the next day the office is open to the public." Appellant has correctly stated that Dec. 30, 1979, was a Sunday.

Accordingly, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decision appealed is affirmed.

Douglas E. Henriques
Administrative Judge

We concur:

Bernard V. Parrette
Chief Administrative Judge

C. Randall Grant, Jr.
Administrative Judge

